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May 24, 2021

VIA FOIAONLINE.GOV

National FOIA Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2310A)  
Washington, DC 20460

Re: Freedom of Information Act Request  
Public Comments – Keehi Marine, Inc.

To the National FOIA Office:

This request is submitted pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. This request is made by the undersigned counsel on behalf of our client, Keehi Marine, Inc. (“KMI”). Unredacted copies of the following two documents are requested:

- The public comment dated February 18, 2021 sent by e-mail as “Comments on Docket Number (CWA-09-2021-0021)”; and
- The EPA’s “Response to Comment on Proposed Administrative Consent Agreement and Final Order In re: Keehi Marine, Inc., EPA Docket No. CWA-R9-2021-0021”.

We have been informed by Desean Garnett, Attorney-Advisor to the U.S. EPA Region 9, that the redactions to the aforementioned documents were due to “personal privacy reasons” (copies of the redacted versions attached hereto for your reference). However, under the EPA Rules and Restrictions, “[c]omments submitted to the EPA, including **any personal information that is in the body of the submission**, will be posted to Regulations.gov and are also made available for in-person viewing at the EPA Docket Center’s Reading Room.”<sup>1</sup> FOIA requires

<sup>1</sup> U.S. Environmental Protection Agency, *Commenting on EPA Dockets*, <https://www.epa.gov/dockets/commenting-epa-dockets> (emphasis added). The public comments are available to the public unless one of the EPA exceptions apply (e.g. threatening language, multimedia submissions, copyrighted material, etc.).

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disclosure if no significant privacy interest is implicated.<sup>2</sup> Therefore, the public comments were voluntarily submitted without a reasonable expectation of privacy.<sup>3</sup>

We acknowledge that the EPA response to the public comment may be locked for editing after it was e-signed by the Assistant Director for Enforcement, Thanne Berg. In the event that fees are incurred relating to this FOIA request beyond what our client is entitled to for free, we are willing to pay costs of up to \$10 without prior notification.

Thank you in advance for your attention to this matter.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL  
A Limited Liability Law Partnership LLP

A handwritten signature in black ink, appearing to read 'Lisa A. Bail', with a stylized, cursive script.

Lisa A. Bail

<sup>2</sup> See *Multi Ag Media LLC v. USDA*, 515 F.3d 1229 (D.C. Cir. 2008); *Ripskis v. HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984); *Finkel v. Dep't of Labor*, No. 05-5525, 2007 WL 1963163, at \*9 (D.N.J. June 29, 2007) (concluding that no balancing analysis was required “due to the Court’s determination that the [defendant] has failed to meet its heavy burden on the issue of whether disclosure will invade the inspectors’ privacy”); *Trentadue v. President's Council on Integrity & Efficiency*, No. 03-CV-339, slip op. at 4 (D. Utah Apr. 26, 2004) (stating that agency made no showing of privacy interest, so names of government employees should be released) (Exemptions 6 and 7(C)); *Holland v. CIA*, No. 91-1233, 1992 WL 233820, at \*16 (D.D.C. Aug. 31, 1992) (stating that information must be disclosed when there is no significant privacy interest, even if public interest is also de minimis).

<sup>3</sup> See, e.g., *People for the Am. Way Found. v. Nat'l Park Serv.*, 503 F. Supp.2d 284, 306 (D.D.C. 2007) (ordering release of names of those who voluntarily submitted comments regarding informational video shown at Lincoln Memorial because “the public interest in knowing who may be exerting influence on National Park Service officials sufficient to convince them to change the video outweighs any privacy interest in one's name.”).

**From:** [R9HearingClerk](#)  
**To:** [Armsey, Steven](#)  
**Subject:** FW: Comments on Docket Number (CWA-09-2021-0021)  
**Date:** Thursday, March 4, 2021 2:45:21 PM

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**From:** [REDACTED]  
**Sent:** Thursday, February 18, 2021 9:53 AM  
**To:** R9HearingClerk <R9HearingClerk@epa.gov>  
**Subject:** Comments on Docket Number (CWA-09-2021-0021)

Mr. Steven Armsey,

My name is [REDACTED]

My comments on docket number CWA-09-2021-0021 are as follows: I believe the respondent continues to violate Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342, by discharging pollutants in storm water to Keehi Lagoon. On numerous occasions I have seen the workers at this facility collect water from pressure washing operations in totes. This water is then distributed across the marina parking lot where it drains in to the ocean. Additionally containment is not being used during sanding and grinding operations involving marine antifouling paints containing heavy metals. This dust can be found on the decks of boats docked in the harbor so it can be assumed it is making it into the water. Also painting operations are occurring with out proper containment. [REDACTED]

I recommend continued close monitoring and inspection of this site as well as random inspections to include after house as much of the improper activity occurs in the evening and weekends when they know they can get away with it.

V/R  
[REDACTED]



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, CA 94105

Sent via certified mail  
Return Receipt Requested #: [REDACTED]

Re: Response to Comment on Proposed Administrative Consent Agreement and Final Order  
*In re: Keehi Marine, Inc.*, EPA Docket No. CWA-R9-2021-0021

Dear [REDACTED]:

I am writing in response to your comments provided to the Regional Hearing Clerk for the U.S. Environmental Protection Agency, Region 9 ("EPA") by e-mail on March 4, 2021 on the above-referenced administrative Consent Agreement and Final Order ("CA/FO") entered into between EPA and Keehi Marine, Inc. d/b/a Keehi Marine Center. As a preliminary matter, however, I first wish to express EPA's appreciation of your participation in the public notice and comment process.

Your comment indicates that the Respondent "continues to violate Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342, by discharging pollutants in storm water to Keehi Lagoon." You have observed several operations occurring at Keehi Marine Center, including pressure washing, sanding and grinding, and painting, that appear to not have the appropriate level of containment. You recommend that EPA continue to closely monitor and inspect the site as well as perform random inspections after hours since that is when most of the alleged improper activities occur.

Thank you for alerting EPA to your observations. Keehi Marine Center's continued compliance with the Clean Water Act is important to EPA. EPA is in the process of following up with the facility and the Hawaii Department of Health to further address your stated concerns. We will continue to closely monitor operations at the facility to ensure enforcement is duly taken if there is noncompliance with the CWA.

Should you witness additional suspected violations at Keehi Marine Center, I encourage you to contact EPA Region 9 (Pacific Southwest) Customer Service Line the next time you suspect improper activity. You may call the toll-free line at (866) 372-9378, Monday through Friday, from 9:00 AM to 4:00 PM PST or Connor Adams in the EPA Honolulu field office at (808) 541-2752. You may also contact Matt Kurano of the Hawaii Department of Health, Clean Water Branch Enforcement Section, at (808) 586-4309 with information regarding suspected noncompliance with the CWA.

EPA's Consolidated Rules of Practice at 40 C.F.R. Part 22 that govern these proceedings require that we provide you a copy of the proposed CA/FO by certified mail, return receipt requested. 40 C.F.R. § 22.45(c)(4). The enclosed CA/FO is identical to the version you commented on and

which was available on-line on EPA's website at the following link:  
<https://www.epa.gov/sites/production/files/2021-01/documents/cwa-09-2021-0021-keehi-marine-inc-cafo-2021-01-19.pdf>. Within 30 days of your receipt of the enclosed proposed CA/FO, you may petition the Regional Administrator for EPA Region 9 to have it set aside on the basis that material evidence was not considered. The address for the Regional Administrator is:

Deborah Jordan, Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Should you decide to submit a petition, please also send a courtesy copy to our attorney Desean Garnett at the email address below:

Desean Garnett, Attorney-Advisor  
U.S. Environmental Protection Agency, Region 9  
Office of Regional Counsel  
[Garnett.Desean@epa.gov](mailto:Garnett.Desean@epa.gov)

Our Consolidated Rules of Practice at 40 C.F.R. § 22.45(c)(4) also require that you provide a copy of your petition to the respondent in this matter, who are listed below:

Yoshi Muraoka  
Keehi Marine, Inc.  
24 Sand Island Access Road  
Honolulu, Hawaii 98619

In accordance with 40 C.F.R. § 22.45(c)(4), please do **not** send any such petition to the Regional Hearing Clerk for EPA Region 9.

Thank you again for your comment. Regardless of whether you file a petition, please note that your comment will be considered and included in this matter's administrative record. If you have any questions, you may contact me by phone at (415) 972-3908 or by email at [Berg.Elizabeth@epa.gov](mailto:Berg.Elizabeth@epa.gov).

Sincerely,

Thanne Berg, Assistant Director  
Enforcement and Compliance Assurance Division